

Part I

Section 2039.— Annuities

26 CFR 20.2039-1: Annuities.
(Also § 2033; 20.2033-1.)

Rev. Rul. 2002-39

ISSUE

Are the accidental death benefits payable pursuant to New York City and New York State laws to specified beneficiaries of a New York City firefighter or police officer who died as a result of injuries sustained in the line of duty includible in the decedent's gross estate?

FACTS

Decedent, a New York City firefighter, died in 2001, as a result of injuries sustained in the line of duty. At the time of death, Decedent was a member of the New York Fire Department Subchapter Two Pension Fund (Fund) to which Decedent made contributions totaling 10x dollars while employed as a firefighter. Decedent was survived by Spouse. After Decedent's death, pursuant to section 13-347(a) of the Administrative Code of the City of New York (N.Y.C. Admin. Code), the pension fund made a 10x dollar payment to Decedent's estate, representing a return of Decedent's contributions to the fund. In addition, pursuant to section 13-347(b) of the N.Y.C. Admin. Code and section 208-f of the New York State General Municipal Law, annuities representing accidental death benefits became payable to Spouse for life. The aggregate present value of the annuities payable to Spouse was 150x dollars on the date of Decedent's death.

LAW AND ANALYSIS

Section 13-347 of the N.Y.C. Admin. Code provides for the payment of accidental death benefits to certain specified beneficiaries of a member of the Fund, if the member's death was the natural and proximate result of an accident sustained while in the performance of duty. N.Y.C. Admin. Code, Retirement and Pensions, section 13-347 (2001). Section 13-347(a) provides for the payment to the decedent's estate, or to such person designated by the decedent, of the decedent's accumulated contributions to the pension fund. Section 13-347(b) provides for the payment of an annuity equal to one-half of the member's salary to the decedent's surviving spouse for

life, or if no surviving spouse (or if the surviving spouse dies before the children reach age 18 (age 23 for students)), to the decedent's children until they reach age 18 (age 23 for students). If none of these beneficiaries survive the decedent, the payment will be made to dependent parents of the decedent as designated by the decedent or, if no designation, the dependent parents as determined by the state comptroller.

Section 13-332 of the N.Y.C. Admin. Code provides that accidental death benefits payable pursuant to section 13-347(b) are funded by contributions from New York City to the pension reserve fund. On the other hand, under sections 13-327 and 13-328, contributions by members of the Fund are made to the annuity savings fund and the annuity reserve fund.

In addition to the benefits provided by New York City, under applicable New York State law, a special death benefit is payable to the decedent's surviving spouse for life, or if no surviving spouse to the decedent's children under the age of 18 (age 23 if the child is a student). This special death benefit is payable if the decedent was a member of a pension or retirement system of a police department or paid fire department of a city, town, or village and the decedent died as a result of injuries sustained in the performance of duty. The benefit is a pension equal to the decedent's salary, reduced by any death benefit payable by the city, town, or village in the form of a pension and any social security and worker's compensation benefits. These benefits are payable with funds appropriated from the New York State's general fund. N.Y. Gen. Mun. Law, section 208-f (McKinney 2001).

Section 2033 of the Internal Revenue Code provides that the value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of death.

Section 2039(a) provides for the inclusion in the decedent's gross estate of the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent under any form of contract or agreement (other than insurance on the decedent's life) if, under the contract or agreement, an annuity or other payment was payable to the decedent, or the decedent possessed the right to receive the annuity or other payment for life or for any period not ascertainable without reference to decedent's death or for any period which does not in fact end before decedent's death.

Section 2039(b) provides that § 2039(a) shall apply to only the part of the value of the annuity or other payment receivable under the contract or agreement as is proportionate to that part of the purchase price therefor contributed by the decedent. Any contributions by the decedent's employer shall be considered to be contributed by the decedent.

Section 20.2039-1(b)(1) of the Estate Tax Regulations provides that the term "contract or agreement" includes any arrangement, understanding or plan, or any combination of these arising by reason of the decedent's employment. If the decedent's employer made contributions to two different funds, one to provide an

annuity to the employee upon the employee's retirement and the other to provide a survivor benefit to the employee's designated beneficiary upon the employee's death, the rights and benefits accruing to the employee by reason of employment under both plans are considered together in determining whether the value of the survivor benefits is includible in the decedent's gross estate under § 2039(a). See § 20.2039-1(b)(2), Example 6.

Rev. Rul. 76-501, 1976-2 C.B. 267, concludes that the present value of a survivor annuity paid under federal law to the spouse of a member of the armed forces who died from a service connected disability is not includible in the decedent's gross estate under either § 2033 or § 2039. The annuity is not includible under § 2033, because the annuity is payable only to individuals designated by statute and the decedent had no power to designate the recipient of the benefit. Further, the annuity is payable from government appropriations and not from any fund in which the decedent had a vested interest. Thus, the benefit is not property in which the decedent had an interest at the time of death. Further, the annuity is not includible under § 2039. The annuity is not payable under any form of contract or agreement entered into by the decedent or arising by reason of the decedent's employment as required under § 2039(a). Rather, these benefits are payable pursuant to a public law enacted to provide for dependents of veterans whose death resulted from injuries suffered in the line of duty. See also Rev. Rul. 79-397, 1979-2 C.B. 322 (the value of death benefits payable pursuant to federal law under the Public Safety Officers' Benefit Act to survivors of decedents who died in the line of duty are not includible in the gross estate); Rev. Rul. 76-102, 1976-1 C.B. 272 (amounts paid under the Federal Coal Mine Health and Safety Act of 1969 are not includible in the gross estate). These rulings involve a statutory benefit that is paid to certain beneficiaries because the decedent's occupation was the proximate cause of the decedent's death. These benefits are contrasted with survivor annuities paid on the death of a retiree under statutory state or federal pension plans that have as a primary function the payment of post-retirement benefits to the plan participant, and that are characterized by employment-related bargained-for benefits and election of survivor benefits. The value of survivor benefits payable under these employment-related post-retirement plans are includible in the gross estate under § 2039. Rev. Rul. 77-95, 1977-1 C.B. 274; Rev. Rul. 75-505, 1975-2 C.B. 364.

In the instant case, the 10x dollar payment paid pursuant to section 13-347(a) of the N.Y.C. Admin. Code represents a return of the Decedent's contributions to the pension fund and is payable to any beneficiary, including the Decedent's estate, designated by the Decedent. This payment constitutes property in which Decedent had an interest at the time of death. Accordingly, the 10x dollar payment is includible in Decedent's gross estate under § 2033.

However, the annuities valued in the aggregate at 150x dollars, payable to Decedent's spouse under section 13-347(b) of the N.Y.C. Admin. Code and section 208-f of the N.Y. Gen. Mun. Law, are not payable pursuant to any form of contract or agreement arising by reason of Decedent's employment. Rather, similar to

the situations presented in Rev. Rul. 76-501, Rev. Rul. 79-397, and Rev. Rul. 76-102, these benefits are payable pursuant to public statutory laws providing for a system of benefit payments to the dependents of firefighters, but only if the firefighter dies in the line of duty. Thus, these benefits are distinguishable from survivor benefits payable on the death of a retiree (or the death of an employee before retirement) under a pension plan intended to provide post-retirement benefits. In addition, the benefits are payable only to certain specified individuals after Decedent's death, and thus, Decedent had no right to receive the payments during life. Accordingly, the accidental death benefits payable pursuant to section 13-347(b) of the N.Y.C. Admin. Code and section 208-f of the N.Y. Gen. Mun. Law are not includible in the Decedent's gross estate under § 2039(a).

Further, the annuities paid pursuant to section 13-347(b) of the N.Y.C. Admin. Code and section 208-f of the N.Y. Gen. Mun. Law are not attributable to any contributions made by the Decedent to a pension fund, nor did the Decedent have any power to designate the beneficiaries of the benefits. Rather, the benefits are funded by New York City and New York State and are payable to beneficiaries, other than the Decedent's estate, specifically designated by the statute. Thus, because the Decedent possessed no property or ownership rights in these death benefits, the value of these annuities is not includible in Decedent's gross estate under § 2033.

The result would be the same if Decedent were a New York City police officer who died in the line of duty and Decedent's survivors became entitled to receive accidental death benefits under New York City and New York State laws. Thus, accidental death benefits payable to certain specified beneficiaries of a member of the New York Police Department Subchapter Two Pension Fund pursuant to section 13-244(a) of the N.Y.C. Admin. Code representing a return of Decedent's contributions to the pension fund would be includible in the gross estate under § 2033. However, accidental death benefits payable pursuant to section 13-244(b) of the N.Y.C. Admin. Code and section 208-f of the N.Y. Gen. Mun. Law would not be includible in the Decedent's gross estate under either § 2033 or § 2039.

HOLDING

The accidental death benefits payable pursuant to New York City and New York State laws to specified beneficiaries of a deceased New York City firefighter or police officer who died in the line of duty are not includible in the decedent's gross estate, except to the extent the benefits represent a return of the decedent's contributions to the pension fund.

DRAFTING INFORMATION

The principal author of this revenue ruling is William Blodgett of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Mr. Blodgett at (202) 622-3090 (not a toll-free call).